

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

March 15, 2007

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, March 15, 2007, at 2:05 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Don Anderson Vice-Chair; John W. McKay Jr.; Bill Johnson; Bob Aldrich; Elizabeth Bishop; M.S. Mitchell; Bud Hentzen; Ronald Marnell; Hoyt Hillman; Morris K. Dunlap; Michael Gisick and G. Nelson Van Fleet. Don Sherman and Harold Warner, Jr. were not present. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Jess McNeely, Senior Planner; Derrick Slocum, Associate Planner; David Barber, Advanced Plans Manager; Scott Knebel, Principal Planner and Maryann Crockett, Recording Secretary.

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1. Election of Chairperson.

MOTION: To nominate **DARRELL DOWNING**.

ALDRICH moved, **DUNLAP** seconded the motion, and it carried (12-0).
It was noted for the record that **DOWNING** was elected by acclamation.

2. Approval of the March 1, 2007 MAPC minutes.

MOTION: To approve the March 1, 2007 MAPC minutes.

HILLMAN moved, **MITCHELL** seconded the motion, and it carried (12-0).

❖ **SUBDIVISION ITEMS**

3. Consideration of Subdivision Committee recommendations from the meeting of March 8, 2007.

- 3-1. **SUB 2007-01: Final Plat -- MATTHEW'S OFFICES ADDITION**, located east of 135th Street West and on the north side of 21st Street North.

NOTE: This is unplatted property located in the County within three miles of the City of Wichita. It is in an area designated as "2030 Urban Growth Area" by the Wichita-Sedgwick County Comprehensive Plan.

The site has been approved for a zone change (ZON 2006-32) from SF-20, Single-Family Residential to NO, Neighborhood Office. A Protective Overlay (P-O #178) was also approved for this site addressing uses.

STAFF COMMENTS:

- A. **City of Wichita Water and Sewer Department** requires that the applicant extends sewer and include sewer main in lieu of assessment fees and outside-the-city application with the petition. Water is available but fees in lieu of assessment are necessary for connection in addition to outside-the-city application.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to

the Planning Department for recording.

- C. The floodway needs changed to a drainage easement.
- D. As requested per **County Engineering**, one access opening has been denoted along the west property line.
- E. **Sedgwick County Fire Department** advises that all access drives shall be in accordance with Sedgwick County Service Drive Code.
- F. A Protective Overlay Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved Protective Overlay and its special conditions for development on this property.
- G. A site benchmark is needed.
- H. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- I. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to staff recommendations.

GISICK moved, **JOHNSON** seconded the motion, and it carried (12-0).

3-2. SUB 2007-02: Final Plat -- BROWNLEE ADDITION, located east of Oliver and north of 85th Street North.

NOTE: This site is located in the County in an area designated as “rural” by the Wichita-Sedgwick County Comprehensive Plan.

STAFF COMMENTS:

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact County Code Enforcement to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval.
- B. In conformance with the Urban Fringe Development Standards, for individual domestic wells that are proposed, a Safe Yield Analysis must be provided to Sedgwick County Code Enforcement to assure the availability of an adequate, safe supply of water that does not impair existing water rights. Easements shall be dedicated for potential future extension of public water.
- C. The site is currently located within the Sedgwick County Rural Water District No. 2. If service is available, feasible and the property is eligible for service, County Code Enforcement recommends connection.
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- E. County Engineering has requested a revised drainage plan.
- F. Provisions shall be made for ownership and maintenance of the proposed reserves. A covenant shall be submitted regarding ownership and maintenance responsibilities.
- G. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- H. Sedgwick County Fire Department advises that all access drives shall be in accordance with Sedgwick County Service Drive Code.
- I. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed.
- J. The applicant shall guarantee the installation of the cul-de-sac to the 36-foot rock suburban street standard.
- K. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- L. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to

be charged back to the owner(s) by the governing body.

- M. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- N. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to staff recommendations.

GISICK moved, **JOHNSON** seconded the motion, and it carried (12-0).

❖ **PUBLIC HEARINGS – VACATION ITEMS**

4. VAC 2007-02: Request to vacate a portion of a platted easement,

OWNER/APPLICANT: Ethanol Products c/o Bob Whiteman

AGENT: PEC, PA, c/o Rob Hartman

LEGAL DESCRIPTION: Generally described as the platted 20-foot utility easement, running parallel to the rear lot lines of Lots 1, 2, 15 & 16, Block 1, the Industrial Air Center Addition, Wichita, Sedgwick County, Kansas.

LOCATION: Generally located west of Webb Road, between 38th & 39th Streets North (WCC #II)

REASON FOR REQUEST: Future building expansion

CURRENT ZONING: Subject property and all adjacent and abutting properties are zoned "LI" Limited Industrial.

The applicant is requesting consideration for the vacation of the described platted easement, as shown on the applicant's site plan. The applicant proposes building over portions of the platted easement. Per the GIS map there are no manholes, sewer or water lines in the easement. Comments from franchised utilities have not been received and are needed to determine if they have utilities located within the easement. The Industrial Air Center Addition was recorded with the Register of Deeds May 15, 1987.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works/Water & Sewer, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted water line and storm sewer easement as described in the legal description with the following conditions.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time February 22, 2007, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described portion of the platted water line and storm sewer easement and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of the platted water line and storm sewer easement described in the petition should be approved with conditions:

- (1) Vacate only that portion of the platted easement as described in the legal description, as approved by City Water & Sewer/Public Works. Provide Planning Staff the approved legal description of the vacated portion of easement, via e-mail on a Word document.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide Public Works/Water & Sewer and franchised utilities/Westar with any needed plans for review for location of utilities. Provide a guarantee for the relocation of the water line and storm sewer line.
- (3) All improvements shall be according to City Standards.
- (4) If needed retain the easement until all utilities have been relocated or a guarantee for relocation of the utilities has been accepted by the City/franchised utilities and the new easements for the relocated utilities has been recorded with the Register of Deeds.
- (5) Bind the 4 lots together as one development site by a restrictive covenant that will be recorded with the Register of Deeds, at the same time the Vacation order is recorded.
- (6) Dedicate by separate instrument 10-feet of contingent right-of-way along Lots 1 & 16's Webb Road frontage, to be recorded with the Register of Deeds, at the same time as the Vacation Order.

- (7) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate only that portion of the platted easement as described in the legal description, as approved by City Water & Sewer/Public Works. Provide Planning Staff the approved legal description of the vacated portion of easement, via e-mail on a Word document.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. Provide Public Works/Water & Sewer and franchised utilities/Westar with any needed plans for review for location of utilities. Provide a guarantee for the relocation of the water line and storm sewer line.
- (3) All improvements shall be according to City Standards.
- (4) If needed retain the easement until all utilities have been relocated or a guarantee for relocation of the utilities has been accepted by the City/franchised utilities and the new easements for the relocated utilities has been recorded with the Register of Deeds.
- (5) Bind the 4 lots together as one development site by a restrictive covenant that will be recorded with the Register of Deeds, at the same time the Vacation order is recorded.
- (6) Dedicate by separate instrument 10-feet of contingent right-of-way along Lots 1 & 16's Webb Road frontage, to be recorded with the Register of Deeds, at the same time as the Vacation Order.
- (7) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: To approve subject to staff recommendations.

JOHNSON moved, **MCKAY** seconded the motion, and it carried (12-0).

❖ PUBLIC HEARINGS

5. **Case No.: ZON2007-04/CUP2007-07** – Michael Williams (owner) Request DP-8 University Gardens Amendment #11 to alter uses, maximum building coverage, gross floor area and number of buildings on Parcel 9 on property described as;

Lot 1, University Gardens 2nd Addition, Sedgwick County, Kansas. Generally located the northeast corner of 21st Street North and Oliver.

BACKGROUND: The applicant is requesting to rezone a 1.8 acre tract from SF-5 Single-family Residential to LC Limited Commercial and to amend DP-9 University Gardens Community Unit Plan. The amendment would change the provisions for maximum building height, maximum land coverage, maximum gross floor area, floor area ratio,

proposed general uses and the maximum number of buildings allowed, on Parcel 9 located on the northeast corner of 21st Street North and North Oliver Avenue.

The subject property is an isolated strip of SF-5 land located between Oliver and other land within the parcel that is already zoned LC. Prior to the current code's landscaping and buffering requirements, it was a common practice to leave a narrow strip of land zoned SF-5 adjacent to LC zoned land to provide a buffer between the applicants property and adjacent property. The practice left an owner with a split-zoned tract. With the adoption of landscaping and supplemental development strategies, split zoning is not used much anymore.

The applicant proposes to change the maximum building height from 30 feet to 45 feet, the maximum land coverage from 3,000 square feet to 15,000 square feet, maximum gross floor area from 6,000 square feet to 27,000 square feet, floor area ratio from 7.6% to 35% and the maximum number of buildings allowed from 1 to 3 buildings. The applicant also proposes to add the following uses to the General Uses; Office, General; Bank or Financial Institution, Retail, General; Restaurant, Convenience Store, Printing and Copying, Limited; College and University and a Vocational School.

The restaurant use, including fast food restaurants with a drive-thru, and convenience store, would be limited to access on 21st Street North only and would require increased screening and landscaping along North Oliver Avenue.

The surrounding area to the south and west includes a golf course, church and single-family residences on property zoned SF-5. The area to the south and east includes offices, a fast food restaurant and strip store on property zoned LC. The property to the north and east includes storage units, a retail store on property zoned LC and vacant SF-5 zoned property.

New buildings would have uniform architectural compatibility to the new development occurring directly to the east of the subject site, Parcel 10, in terms of character, color, texture and materials, and exterior walls facing residential would not be metal siding. The parcel would share a similar landscape palette as the development just east of the subject site. A site plan would be required to assure internal cross lot circulation, joint access and smooth traffic flow.

CASE HISTORY: DP-8 University Gardens Community Unit Plan was originally approved July 6, 1965. The property was platted as University Gardens Second Addition in March 1977. The last approved amendment to DP-8, Amendment #10, was on March 22, 2001.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5, LC	Strip Store
SOUTH:	SF-5, LC	Church, Office
EAST:	LC	Mini-Storage
WEST:	SF-5	Residential

PUBLIC SERVICES: There is currently one primary access point off 21st Street North and a shared access point off North Oliver Avenue. 21st Street North is a five lane arterial and North Oliver Avenue is a four lane arterial. Traffic counts for the west side of the intersection of 21st Street North and North Oliver Avenue were approximately 22,757 vehicles per day in 2006, the east side saw 19,465 vehicles, the north side saw 14,691 vehicles and the south side saw 16,240 vehicles per day.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide," of the *Wichita-Sedgwick County Comprehensive Plan* identifies the site as "local commercial". The proposed CUP amendment is in conformance with this designation. **Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses," with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide," and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations, and **Strategy III.B.6** seeking to channel traffic generated by commercial activities to the closest major thorough-fare with minimum impact upon local residential streets. **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should have

site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed CUP would follow these guidelines.

RECOMMENDATION: Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to the following conditions:

A. APPROVE the zone change (ZON2007-07) from SF-5 Single-family Residential to LC Limited Commercial.

B. APPROVE the Community Unit Plan (DP-8) Amendment #11, subject to the following conditions:

1) Proposed General Provision changes for Parcel 9 in CUP DP-8 shall be amended to read as follows:

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|-------------------------------------|---|
| A) <u>Area:</u> | 78,708.6 Square feet or 1.807 acres |
| B) <u>Setbacks:</u> | 21 st Street: 35ft.
Oliver Ave: 35ft. |
| C) <u>Maximum Building Height:</u> | 45 Feet |
| D) <u>Maximum Land Coverage:</u> | 15,000 Square feet |
| E) <u>Maximum Gross Floor Area:</u> | 27,000 Square feet |
| F) <u>Floor Area Ratio:</u> | 35% |

Parking as per Zoning Ordinance

- | | |
|-------------------------------|---|
| <u>Access Points:</u> | Primary access off 21 st Street North. |
| <u>Proposed General Uses:</u> | |

Office (General)
Bank or Financial Institution
Retail (General)
Restaurant
Convenience Store
Printing and Copying (Limited)
College and University
Vocational School
Maximum Number of Buildings: Three

- 2) The primary point of access for Parcel 9 shall be from 21st Street North to mitigate any negative traffic and noise impacts on the residences located on the west side of North Oliver Avenue.
- 3) A landscaped street yard shall be provided per the Landscape Ordinance along 21st Street North and along North Oliver Avenue.
- 4) Architectural Control – New buildings would have uniform architectural compatibility to the new development occurring directly to the east of the subject site, Parcel 10, in terms of character, color, texture and materials, and exterior walls facing residential would not be metal siding. The parcel would share a similar landscape palette as the development just east of the subject site, as approved by the Director of Planning. Lighting shall be designed to reflect downward and away from residential areas and to comply with provisions of the Unified Zoning Code.
- 5) Loading areas, trash receptacles, outside storage, and docks in Parcel 9 shall be screened from ground level view with materials to match or similar to that of the main building materials from 21st Street North and from adjacent property zoned LC.
- 6) The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property to the north is zoned SF-5 Single-family Residential and LC Limited Commercial, with the SF-5 zoned property currently vacant and the LC zone developed with a retail store. The property to the south is zoned SF-5 and LC; with the SF-5 property

developed as a church and the LC zone an office complex. The property to the east of the CUP is zoned SF-5 Single-family Residential and is developed with single-family residences. The property to the west is zoned LC and is developed with a retail store, self-storage use and a fast food restaurant.

2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed as zoned, SF-5, although it has been by-passed for development for this purpose for 40 years.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The greatest potential impact is to the properties along North Oliver in the Crestview Lake Addition. In terms of existing zoning, Sf-5 zoning runs parallel to Oliver, near this location, but LC zone run east along 21st Street North. This suggests that limitations on permitted uses, signage, landscaping and screening are needed to ensure that any potential LC uses along North Oliver be developed in a manner to reduce impacts on surrounding districts with less intense zoning.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "2030 Wichita Functional Land Use Guide", 2005 amendments to the *Wichita-Sedgwick County Comprehensive Plan* identifies the site as "local commercial". **Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations, and **Strategy III.B.6** seeking to channel traffic generated by commercial activities to the closest major thorough-fare with minimum impact upon local residential streets. **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The proposed CUP would follow these guidelines.
5. Impact of the proposed development on community facilities: The impact on traffic is less for local commercial than for a full-scale regional commercial facility. The main access point for this development would be located off 21 Street North to help reduce traffic impacts along North Oliver.

DERRICK SLOCUM Planning staff, presented the staff report.

MOTION: To approve subject to staff recommendations.

JOHNSON moved, **MCKAY** seconded the motion, and it carried (12-0).

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6. **Case No.: ZON2007-05** – Dan Morrison (Owner), Mike Brand (Applicant), Terry Smythe (Agent)
Request Zone change from "SF-5" Single-family residential to "TF-3" Two-family residential for duplex development on property described as;

Lots 1 and 2, Sun-Air Estates Addition, Sedgwick County, Kansas. Generally located South of 45th Street North and west of Cypress (8801 and 8823 East 45th Street North).

BACKGROUND: The application area consists of two developed, platted lots located midway between North Rock Road and North Webb Road, on the south side of E. 45th Street North. The 2.5-acre site is zoned "SF-5" Single-family Residential, the applicant requests "TF-3" zoning to allow for duplex development. The applicant proposes to develop the site with duplexes along a planned cul-de-sac.

The property north of the site is within the Bel Aire city limits and is currently undeveloped. South and east of the site are "SF-5" zoned single-family residences. West of the site, are "TF-3" zoned duplex units. The site has easy access to East 45th Street North.

CASE HISTORY: The site was platted as Lots 1 and 2 of the Sun-Air Estates Addition in 1954.

ADJACENT ZONING AND LAND USE:

NORTH:	“City of Bel Aire Zoning” Agricultural Land/Open Space	
SOUTH:	“SF-5”	Single-family residential
EAST:	“SF-5”	Single-family residential
WEST:	“TF-3”	Two-family residential

PUBLIC SERVICES: East 45th Street North is a paved 2-lane arterial with an 80-foot right-of-way at this location. The site has easy access to the west to Rock Road, a paved 2-lane arterial with an 80-foot right-of-way and access to the east on Webb Road, a paved 4-lane arterial with a 120-foot right-of-way. Hwy 96 is located approximately 2 miles south of the subject site by either Webb or Rock Road. Sewer service will tie into the line to the west of the site and water service will also be extended to the site with re-platting.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this site as appropriate for “Urban Residential.” The Urban Residential category includes all densities of residential development found within the urban municipality. The Unified Zoning Code (UZY) requires a minimum lot area of 3,000 square feet per residential unit in “TF-3” zoning. Lot 1 is 1.35 acres or 58,806 square feet and lot 2 is 1.26 acres or 54,886 square feet. The applicant has indicated a desire to re-plat this property. Under TF-3 zoning, the site could be re-platted to eighteen lots, and developed with up to eighteen duplexes, but the site plan provided calls for only seven lots, thus reducing the density that is possible for the subject site.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to re-platting within one year and limited to seven lots.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The immediate residential neighborhood is zoned “SF-5” Single-family Residential, and developed primarily with single-family homes. The application abuts large lot “SF-5” Single Family Residential zoning to the south and east developed with single-family residences. The proposed rezoning would provide for larger lots (smallest being around 12,000 square feet) duplex development that is compatible to the density of common “SF-5” residential developments throughout the city.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently developed with single-family residential uses. Because the site abuts residential uses on three sides, and has access to a 2-lane arterial, it is more desirable for single-family and multi-family development, than commercial or higher-density residential development.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request would double the density at which the site could be developed. The site currently could be re-platted to accommodate twenty-two lots. Under a rezoning, the site could be re-platted to accommodate thirty-seven lots. The site plan for the proposed development shows a re-plat creating only seven lots. The affect on nearby residents would be increased traffic. However, single-family residences generate more traffic per unit than two-family residences. The minimum standards of the Unified Zoning Code should mitigate any other potential negative affects on the surrounding residential neighbors.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this site as appropriate for “Urban Residential”. The Urban Residential category includes all densities of residential development found within the urban municipality.
6. Impact of the proposed development on community facilities: Traffic on the existing residential streets will increase as a result of the proposed development. This site has access to an arterial street, running along the

north property line; and to a state highway, approximately 2 miles to the south. Other community services are in place or will become available.

DALE MILLER Planning staff, presented the staff report, noting that District Advisory Board II had decided to not review the case until a required screening fence on property (owned by the applicant) adjacent to the application area was installed, and the DAB asked that the MAPC be so advised. They had also recommended that the request not be moved on for city council consideration until the fence had been installed. **MILLER** reported that the fence along the south side of the property would be completed within the next week; and that the fence further to the north and east would be completed after construction was finished, if the zoning request is approved. Responding to a question from **HENTZEN** concerning the type of fence required, **MILLER** said a wooden privacy fence. Responding to a question from **BISHOP** concerning on street parking, **MILLER** explained that if the street were less than standard size, the Subdivision Regulations required that off-street parking be provided.

TERRY SMYTHE, BAUGHMAN COMPANY, representing the property owner said the applicant had applied for an adjustment to the fence requirement on the north and east sides. He said the fence on the south side would be completed immediately; however, because of drainage issues, they preferred to wait until the duplexes are constructed to complete the fencing on the north and east sides of the complex. He added that according to the UZC, fencing is not required between duplexes and single-family residential; however, the developer has agreed to provide fencing.

MCKAY asked if construction of the south fence was one of the requirements of the conditional use permit, why hasn't the fence been completed until now when it has become an issue? How did that happen? **MILLER** explained that it was an enforcement issue under the jurisdiction of the Office of Central Inspection (OCI).

MCKAY suggested that completion of the fences be required as a "condition of occupancy."

DIANA OLDHAM, 4423 N. LINDEN, said the south fence was supposed to be built before the certificate of occupancy was issued the first time. She said it has been two years since the duplexes have been completed and the fence still isn't up. She said the neighbors even offered to build the fence if the developer would pay for the materials. She said she has spent two years picking up trash from the duplexes and construction of them. She said she would like to see the east fence completed prior to construction so she won't spend the summer picking up trash and construction debris that blow into her yard from the construction site. She asked that this request be included in the agreement to build the duplexes. She said it is a constant battle to keep dogs from digging up her grass and people out of her yard.

MITCHELL clarified that the south fence will be constructed within ten days.

DIANA OLDHAM said the south fence was supposed to be up by Saturday. She said she was also requesting that the east fence to the new addition be constructed before construction is done to keep materials out of her back yard.

DAVID MULLHAGEN, 4341 N. CYPRESS, representing District Advisory Board (DAB) II, said their main concern was that the south fence be built immediately. He mentioned that 45th Street was a transition area and that they would like to have their privacy as well as have a barrier and protection from people and trash. He concluded by adding that they would like the secondary fencing along the north and east completed before occupancy can occur.

TERRY SMYTHE suggested that a temporary orange fence be added on the north and east sides of the site during construction that will handle whatever trash may accumulate, and that a wood fence be built after construction is complete.

BISHOP commented that there appeared to be an enforcement issue and she wanted to explore that. She said if construction of a fence was part of the condition of occupancy, how did it happen that it didn't occur?

MILLER responded that OCI handles enforcement issues, and said he was not sure what procedures they use to insure all requirements are completed, but obviously, something fell through the crack.

BISHOP asked if they allow the developer to build temporary construction fences, how can they assure the neighbors that this situation won't happen again?

MILLER commented that the situation has the attention of OCI enforcement staff and added that it doesn't hurt that a DAB member lives in the neighborhood.

MOTON: To approve subject to staff recommendations and construction of a temporary fence on the north and east sides of the site during construction; immediate installation of the permanent fence on the south side; and that construction of the permanent fence on the north and east be a "condition of occupancy."

ALDRICH moved, **MARNELL** seconded the motion, and it carried (12-0).

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7. **Case No.: CON2007-04** – The Boeing Company, c/o Steven Tochiko, Tim W. Frasher Request Conditional Use to amend existing permit for C&D landfill on property described as;

A tract of land in the North Half of Section 15, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas described as: Beginning at the SE corner of the NW/4 of said Section 15; thence bearing S 89 degrees 54'04" W along the south line of said NW/4 a distance of 291.72 feet to a point in the easterly right-of-way of the Kansas Turnpike; thence along said right-of-way bearing N 16 degrees 13'15" E a distance of 1017.38 feet to the intersection of said east right-of-way with the west line of the NE/4 of said Section 15; thence continuing along said east right-of-way bearing N 13 degrees 16'15" E a distance of 729.73 feet to the P.C. of a spiral curve to the right; thence easterly along said curve having a chord of 479.00 feet bearing N 18 degrees 40'21" E to the P.C.C. of a circular curve to the right having a radius of 1759.86 feet and a chord bearing of N 33 degrees 29'35" E through a central angle of 19 degrees 32'39" an arc distance of 600.31 feet to a point 25.00 feet south of the north line of said NE/4; thence bearing N 90 degrees 00'00" E parallel to and 25.00 feet south of the north line of said NE/4 a distance of 263.03 feet; thence bearing S 87 degrees 08'15" E a distance of 200.25 feet; thence bearing N 90 degrees 00'00" E a distance of 62.14 feet to the P.C. of a curve to the right having a radius of 1041.74 feet; thence along said curve through a central angle of 33 degrees 16'52" an arc distance of 605.11 feet; thence bearing S 56 degrees 43'00" E a distance of 413.04 feet; thence bearing S 33 degrees 17'00" W a distance of 73.02 feet; thence bearing S 58 degrees 04'11" W a distance of 110.62 feet; thence bearing S 20 degrees 50'28" W a distance of 211.80 feet; thence bearing S 29 degrees 17'16" W a distance of 232.19 feet; thence bearing S 27 degrees 34'40" W a distance of 348.16 feet; thence bearing S 19 degrees 16'29" W a distance of 220.72 feet; thence bearing S 39 degrees 25'19" W a distance of 263.31 feet; thence bearing S 26 degrees 36'31" W a distance of 114.88 feet; thence bearing S 17 degrees 01'25" W a distance of 127.12 feet; thence bearing S 32 degrees 21'56" W a distance of 130.76 feet; thence bearing S 33 degrees 36'32" W a distance of 143.41 feet; thence bearing S 28 degrees 50'55" W a distance of 258.17 feet; thence bearing S 15 degrees 06'15" W a distance of 196.36 feet; thence bearing S 7 degrees 40'00" E a distance of 110.48 feet to a point in the south line of said NE/4; thence along said south line bearing S 89 degrees 53'01" W a distance of 998.79 feet to the point of beginning. Generally located between I-35 and the Arkansas River and south of MacArthur Road.

BACKGROUND: The 69-acre site is currently zoned "GI" General Industrial with Special Use Permit DR 92-12. DR 92-12 established a construction and demolition waste (C&D) landfill on the site, subject to 18 conditions. One of those conditions ('C') states that deposits of material on the site cease June 30, 2007. This is the condition that the applicant, the Boeing Company, desires to amend and is requesting a 15-year extension for the C&D landfill. Another condition ("D") is that the C&D landfill not be open to the general public and that only waste collection vehicles licensed by Chapter 7.08 of the Code of Wichita and operated by Boeing or under contract by Boeing can use the landfill. This is significant in that Boeing states that a future option of the site is that it be sold to a 'responsible municipality,' which is not an option under this condition.

The C&D landfill is confined to an area bounded by the Arkansas River on its east side, MacArthur Road on its north side, I-35 on its west side and large auto salvage yards on its south side. The area around the site is a mix of

closed landfills intended to be developed as Public Parks, a Public Park, another C&D landfill, auto salvage yards, a surplus yard, manufactured home complexes and a lumberyard. The Boeing – Spirit aircraft-manufacturing complex is the dominant business in the area and one the largest in the County. The commercial aircraft division of Boeing was sold to Onex prior to 2006 and reorganized as Spirit Aircraft. This complex is zoned “LI” Limited Industrial and is located approximately ¼-mile east of the site, across the Arkansas and state highway K-15.

Property located north of the subject site, across MacArthur Road, is zoned “LI” and “GC” General Commercial. The approximately 12.45-acre privately owned property is open to the general public as a wood salvage and surplus yard. At one time this surplus site was owned by the City and used as the Chapin-Emery municipal waste landfill from 1979-1981. North of the ‘surplus’ yard and across I-35 and MacArthur is the “LI” zoned closed Chapin Municipal Landfill. Chapin operated as a solid waste landfill from 1954-1980 and continued to operate as a C&D landfill up to 1987. The approximately (+)172.82-acre Chapin site is designate a Public Park. On March 26, 2007, the City Park Department is selecting a design consultant for the future multi-use development of Chapin Park. Properties abutting the south side of the subject site are zoned “LI” and have Conditional Uses permitting them to operate as auto salvage yards.

Properties east of the site, across the Arkansas (which runs parallel to the east side of the site), are zoned “SF-20” Single-family Residential (isolated County land), with some “SF-5” Single-family Residential, “LC” Limited Commercial and “LI” zoning. These lands are developed as a manufactured home complex, a single-family residential subdivision, a lumberyard and some type of outdoor storage. Properties west of the site, across a raised section of I-35 (which runs parallel to the west side of the subject site) are zoned “MH” Manufactured Housing and “SF-5.” These lands are developed as a manufactured home complex and the 25-acre Emery Public Park. Public Water and sewer are available to all of the residential uses in the area. There is an active C&D landfill located approximately ¾-mile northeast of the site, which is permitted to operate until 2010.

The applicant has supplied materials that are included in the MAPC packet. These materials give a history of the site, state that the site is to support the long term growth of the company, break down the type of debris that will be accepted at the site (from Boeing only and closed to the general public), and that there is approximately 30,000 tons of C&D waste deposited each year on the site. The materials also state that because of an anticipated drop of waste deposited on the site, from 30,000 tons to 1,500 tons per year, that future options for the site are;

- (a) Sell the landfill to a responsible municipality, i.e., the City of Wichita.
- (b) Continue to operate the C&D Landfill until this spring and then close it permanently and sell off the land.

The site has been approved to operate by the Kansas Department of Health and Environment (KDHE), beyond DR 92-12’s June 30, 2007 cut off date. Generally speaking as part of the permitting process KDHE factors in the size of the site and the volume of waste present on the site and projected for the site.

CASE HISTORY: Boeing began using a portion of the current site, which at that time was located in the County, as a Boeing Company landfill in 1953, prior to County zoning. In 1958, the County adopted zoning and the site was zoned “E” Light Industrial. In 1962, the site was annexed into the City, while retaining its Light Industrial zoning. KDHE licensed the site in 1976, the first year for licensing landfills by the State. Groundwater contamination from sludge disposal prior to 1976 was discovered in the 1980s. Boeing was/is required to operate a groundwater recovery/treatment system, with monitor wells analyzed quarterly under the direction of KDHE. Asbestos disposal was allowed at the site, with deed restrictions notifying potential buyers of the burial of the asbestos and giving its exact location. The site at this time was approximately 29-acres in size and was almost complete, this portion of the site is referred to as Phase I and was considered a legal nonconforming use.

A zone change from “E” Light Industrial to “F” Heavy Industrial and a Special Use Permit to expand the existing C&D landfill to its current 69-acres were approved by the MAPC May 21, 1992 and by the WCC July 7, 1992; Z-3053 and DR 92-12. One of the conditions (condition ‘C’) of approval was that the deposit of material on site shall cease by June 30, 2007; attached Resolution R-92-413. At that time the Boeing Company had indicated that the C&D site would be developed as a park for Boeing Employees when it ceases to operate.

The Boeing Company made a presentation to DAB III, at their February 7, 2007 meeting. This was not the advertised DAB meeting in reference to the MAPC Public hearing date, thus no recommendation was made by the DAB at that time.

At the March 7, 2007 DAB III meeting the Boeing Company stated that the future options for the site are;

- (a) Sell the landfill to a responsible municipality, i.e., the City of Wichita. If Boeing received the extension, but could not sell the site as a C&D landfill to a responsibility municipality, they would not operate the site themselves, as their current plans in Wichita does not include operating a C&D landfill. Boeing also stated that, currently, the existence of the C&D landfill at this does not affect the ability of the Wichita site to continue to operate.
- (b) Continue to operate the C&D Landfill until this spring and then close it permanently and sell off the land, with deed restrictions.

DAB III recommended denial of the request, recognizing the existence of another C&D landfill off of 31st Street South and K-15, which Boeing could use and stating that the phasing out of the long used landfills in the area to other uses, such as parkland, was of benefit to the area. The DAB also recognized Boeing's longstanding contributions to the community and were reassured by Boeing stating that, currently, the existence of the C&D landfill at this does not affect the ability of the Boeing Wichita to continue to operate.

ADJACENT ZONING AND LAND USE:

NORTH: "LI", "GC"	wood salvage & surplus, Public Park
SOUTH: "LI"	auto salvage yard
EAST: "SF-20", "LC"	river, manufactured housing
WEST: "MH", "SF-5"	I-35, manufactured housing, Public Park

PUBLIC SERVICES: The site has access to MacArthur Road, a four-lane arterial, with a median strip. Average daily trips (ADT) south along this section of MacArthur are approximately 9,775 ADT. The 2030 Transportation Plan projects traffic along this section of MacArthur to increase to approximately 12,523 ADT. Municipal sewer or water services are not necessary for this use.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide" depicts this site as appropriate for 'park and open space.' The Guide shows the site as part of a continuous system of park and open space lands that follow the Arkansas River from 53rd Street North to below 71st Street South. The Guide shows the site being directly linked to Chapin Public Park. The Comprehensive Plan states that parks should be located and developed with public safety, convenience and need as high priorities. The Plan does not have specific location guidelines for C&D landfills, however they are considered an industrial type of use. The Plan recommends that industrial uses be located in close proximity to support services, be provided good access to major arterials, truck routes, belt highways, utility truck lines, rail spurs, airports and as extensions of existing industrial uses. The site's current C&D use meets those criteria, although the area around the site is for the most part in transition from being some type of landfill to parkland. Per Condition 'D' of DR 92-12 the Boeing Company is the only user of the site and it has projected a future 95% drop in the amount of C&D waste deposited on the site

The Plan's objectives also recognize the need to minimize the potential for environmental contamination while maintaining cost efficiency by proper management of construction debris generated within the county. The City and the State have recognized the impact of pollution on the Arkansas River and its subsequent spread through the river's area as potentially detrimental to the public health and the environment. The community has also recognized the River's potential for recreational activities, thus the recent discussion of putting more docks along the River for boating/canoeing within existing or projected parkland. The Arkansas River has status as a "navigable stream used for interstate commerce", under KSA 65-3407(k)(1) and other statutory and judicial interpretations. This recognition, and the concern for the environment for example, has been applied by the City and the State in opposing the establishment of new and expansion of existing C&D landfills within the proximity of a ½-mile to the Arkansas River.

RECOMMENDATION: Based on the (a) the "2030 Wichita Functional Land Use Guide" projecting the site as future park/open space, (b) the transition of a significant portion of the area's uses being from landfills to parks, (c) the applicant's projected 95% drop off of total tons of C&D waste deposited on the site, (d) the existence of another C&D landfill approximately ¾-mile from the site, which the applicant could use, and (d) operation of the site as a C&D landfill is currently not critical to the ability of the Boeing Wichita to continue to operate, Staff recommends

that the request for an extension of DR 92-12 for the operation of a C&D landfill at the site for another 15-years (June 30, 2022) be DENIED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The zoning in the area ranges from “SF-5,” “SF-20,” and “MH” to “LC,” “GC,” “LI,” and the site’s “GI” zoning. Uses include existing Public Park land, manufactured home complexes, single-family residences, a surplus yard, auto salvage yards, and a lumberyard. A significant portion of the “LI” (and the site’s “GI” zoned site) zoned land was long used as solid waste and C&D landfills prior to County zoning. A large portion of those lands are now being designed as multi-purpose Public Parks and as such mark a transition in the area from industrial types of uses to public facilities, in this case over 172-acres of parkland with proposed playing fields, radio controlled airplane flying/kite flying areas, bike trails, launching docks on the river, BMX/mountain bike courses, Frisbee golf courses and a dog park.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned “GI” subject to the conditions of Special Use Permit DR 92-12. One of those conditions was that the C&D operations cease by June 30, 2007. In the past it has been the City’s intention to have the these type of land uses utilized for a use that would have less environmental impact on the river than the current Special Use Permit allows.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Denial of the request would return the property to its base “GI” zoning and the property would be available for other appropriate uses, including the applicant’s original (1992) concept of the site as a park for its employees. Therefore denial of the request would not impose any determinate affect on nearby properties.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: The hardship imposed on the applicant is primarily economic. However the applicant was aware that there were restrictions, as specified in Condition ‘C’, which states that the Special Use Permit will end June 30, 2007. Closure of the site should enhance public health and welfare, given the site’s proximity to the river and concerns of traffic, dust, noise and potential pollution generated by the site. There is an existing C&D landfill located approximately ¾-miles northeast of the site that the applicant could use to deposit their C&D debris.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “Wichita Land Use Guide” depicts this site as appropriate for park and open space. The City and the State have recognized the impact of pollution on the Arkansas River and its subsequent spread through the river’s area as potentially detrimental to the public health and the environment.
6. Impact of the proposed development on community facilities: If the request is denied, none readily identified, although the existing C&D landfill located northeast of the site would probably have an increase in C&D debris deposited on it, if the requested extension was denied. Considering the Boeing Company’s future projection of generating 1,500-tons of debris as opposed to the current 30,000 tons, the increase of C&D debris on the other C&D site would seem minimal.

BILL LONGNECKER Planning staff, presented staff report.

ALDRICH asked if Boeing no longer wants to operate the construction and demotion (C&D) landfill, why apply for a permit to extend the time for the site?

LONGNECKER commented that according to Boeing’s application on future options on the site, it would seem to increase their chances of selling the site.

Responding to a question from **MCKAY** concerning how long the site has operated, **LONGNECKER** reviewed the case history. There was brief discussion concerning how the rules had changed since the original and last permits were issued. **LONGNECKER** noted that landfills were no longer allowed within ½-mile of what is considered a “navigable river”, which the Arkansas is considered, partially due to the environmental impact, and he added that there were some judicial questions regarding what is considered a “navigable river.”

HILLMAN asked when contamination at the site was determined?

LONGNECKER once again referred to the case history commenting that the groundwater contamination was discovered in the 1980s. He said that Boeing is required to operate a groundwater treatment/recovery system for a minimum of 30 years after the site is closed, with monitoring wells analyzed quarterly under the direction of KDHE.

Responding to a question from **HILLMAN** concerning whether Boeing would continue to operate the treatment/recovery system if they sold the property, **LONGNECKER** said that would be a contractual matter between Boeing and the buyer of the site.

HILLMAN clarified that there was the potential to pass that remediation responsibility off to the City. **LONGNECKER** responded that was correct because monitoring had to happen. Responding to a question from **DUNLAP**, **LONGNECKER** confirmed that the site was currently compliant with KDHE.

GISICK asked about turning the area into a park for Boeing employees. **LONGNECKER** responded that was a conceptual idea, presented by Boeing at their application for the Special Use Permit.

GERALD GARLETTER introduced himself and **TIM FRASHER, FROM BOEING, SAFETY, HEALTH AND ENVIRONMENTAL AFFAIRS**. He explained that Boeing was requesting the extension of the conditional use because they desired to sell the site to a responsible municipality or close the landfill. He said they would like to sell it for two reasons, namely; it still had a long life left and could take one million more tons of debris, and it could be a solution to the City if they need a C&D landfill. He said if the City grants the extension request, they would like to enter into negotiations to buy the site. He said if the extension request is not granted, Boeing will close the landfill and sell the land.

TIM FRASHER explained that the landfill was established in 1953 to support Boeing’s military and commercial operations. He said in 2005, when some of Boeing’s operations were sold, there was a drop in the amount of waste being generated. He said in 2006 they generated an estimated 1,500 tons of debris and that projections for 2007 were even less. He said there is approximately one million tons of capacity left (or 30,000 tons per year for 30 years) at the 69-acre site that was fenced, well groomed and landscaped with accessible roads. He said Boeing has all the necessary operating permits and they are in good standing with the State. He explained that the groundwater contamination, which became evident in 1983, was under a closed cell. He said Boeing follows State requirements and reports on a quarterly basis. He said this extension application will give the City an opportunity to determine its future C&D landfill needs and determine if this is an asset they may want to purchase.

DUNLAP asked about the liability if they sell the property.

FRASHER commented that could be negotiated.

DUNLAP commented that Boeing was making no commitment to continue or not continue remediation. He also asked, since Spirit was a similar operation, why didn’t Boeing try to sell the site to them?

GARLETTER said Boeing had not entered into negotiations with any other private organization or group and that their first option was to see if the City wanted the site.

DUNLAP asked didn’t their partner Spirit need the landfill?

GARLETTER commented that Spirit hasn’t used the landfill since the two businesses were separated and that was a question for Spirit.

Tape 1, Side 2

DONNA TAYLOR, 6555 S. HYDRAULIC said there are too many landfills and trash dumps in south Wichita and that she would like to see this area go into the park system. She said if Boeing doesn't use it, the City would end up taking care of it. She commented on the water treatment facility at Herman Hill Park that will be pumping for 40 years. She said to the City of Wichita it is worth something, and suggested that the City work with Boeing or whoever takes it. She said more parks were needed on the south side of the City. She concluded by stating that it was our responsibility to take good care of our land and water.

GARLETTER said the contamination is and has been controlled since it was found. He said if the City chooses to continue to use the site as a C&D landfill, it would not add to the contamination that already exists.

MOTION: To approve denial of the application subject to staff recommendations.

HILLMAN moved, **BISHOP** seconded the motion, and it carried (12-0).

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8. **Case No. CON2007-05** – Marjorie and Bruce Bergmann (Property owner/Applicant) Request Conditional Use for outdoor and indoor recreation in "RR" Rural Residential zoning for a haunted house and corn maze.

The South 1320 feet of the East 680 feet of the North half of the Southeast Quarter
Section 12, Township 20 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas.
Generally located West of south Meridian, between 79th and 87th Streets South (8501 South Meridian).

BACKGROUND: The applicant requests a Conditional Use for Recreation and Entertainment, Indoor and Outdoor (a corn maze and a haunted house) on a 20.6-acre "RR" Rural Residential zoned site, generally located west of Meridian and south of 79th Street South. The unplatted property is used for agriculture, and has held annual corn mazes for several years. The applicant now proposes adding an annual haunted house, and requests a Conditional Use for Recreation and Entertainment. All surrounding properties are also zoned RR. An undeveloped area within the City of Haysville lies over 600 feet northwest of the site, and developed areas within the City of Haysville are ½ mile north of the site, just north of 79th Street South. This site is within the Haysville Zoning Area of Influence; this request will receive a recommendation from the Haysville Planning Commission. Property immediately north of the site is developed with a single-family residence farmstead, all other surrounding property is used for agriculture.

The attached site plan indicates unpaved parking for approximately 250 vehicles, a parking overflow area, and one four by eight foot sign. The site plan indicates several existing outbuildings, and 15 proposed small outbuildings within an orchard that would be used for the haunted house. The applicant indicates that the small buildings would be temporary in nature. A large, permanent indoor facility would require the applicant to meet public restroom and ADA codes, which the applicant wishes to avoid. The applicant uses portable toilets for the seasonal recreation/entertainment.

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH:	"RR"	Farmstead
SOUTH:	"RR"	Agriculture
EAST:	"RR"	Agriculture
WEST:	"RR"	Agriculture

PUBLIC SERVICES: This site is accessed via Meridian, a paved two-lane section-line road with a 40-foot half-width right-of-way (ROW) at the site. Immediately north of this site, Meridian has a 60-foot half-width ROW. This

portion of Meridian has a daily traffic count of 1,922. The 2030 Transportation Plan indicates that this portion of Meridian will remain a two-lane arterial. The site has no water or sewer.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” of the *Wichita-Sedgwick County Comprehensive Plan* identifies this area as within the Haysville Growth Area. This site is not within the boundaries of the South Wichita/Haysville Area Plan.

The UZC provides for Outdoor Recreation as a Conditional Use limited to tennis courts, miniature golf, and similar uses that the Planning Commission has determined will not produce undue noise or attract large numbers of spectators. The UZC goes on to apply supplementary use regulations for the Outdoor Recreation Conditional Use to include lighting, noise, driveway/parking surfacing, the option to establish operating hours, maintenance requirements, and a standard stating that street access shall be contiguous to an arterial or expressway. Because this application does not meet the driveway and parking area paving requirement, this request will require governing body approval according to the UZC section V-D.6.

RECOMMENDATION: The Comprehensive Plan identifies this site as within the Haysville Growth Area; the proposed conditional use could be an interim low impact use of the land, along with agriculture, requiring little site disruption. Because the site is greater than 20 acres, staff does not see that platting is necessary. However, County Engineering indicates that drainage problems exist in the immediate area. Engineering feels that drainage ditches will require improvements, requiring a total of 60 feet of ROW. County Engineering also indicates that the current drive approach does not meet county commercial standards of 30 feet. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to dedication of 20 feet of ROW along Meridian, and the following conditions:

1. The Conditional Use for Indoor and Outdoor Recreation and Entertainment shall be for a corn maze and haunted house facility only.
2. The applicants shall obtain all applicable permits including, but not limited to: building, health, drainage and zoning.
3. The applicant shall submit a drainage plan, to be approved by the County Engineer, prior to making any building, parking, road, or site improvements.
4. The entrance drive to the site shall meet County commercial standards of 30 feet in width.
5. Development and maintenance of the site shall be in conformance with the approved site plan.
6. No lighting of outdoor entertainment/recreation areas or lighting of parking lots shall be permitted. Outdoor lights may exist attached to buildings only.
7. No outdoor sound amplification systems shall be permitted on the site.
8. Indoor and Outdoor Recreation and Entertainment for a corn maze and haunted house facility shall be limited to the months of September through November, and shall be limited to the hours of 11 AM to 1 AM.
9. No outdoor entertainment/recreation areas shall exist within 125 feet of the north property line.
10. If operations have not begun within one year of approval, or if the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

- 1) The zoning, uses and character of the surrounding area: All property surrounding the application area is zoned RR and used for agriculture. One farmstead abuts the site to the north.

- 2) The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR, which primarily permits agriculture and large lot residential uses. The site could be used for a single-family residence or agriculture without the Conditional Use.
- 3) Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed Conditional Use could have negative affects on the residence to the north through increased activity, noise, and light. These issues should be mitigated through the proposed conditions limiting lighting, noise, and requiring a 125-foot buffer. Likewise, appropriate agency review should ensure that improvements on the site do not contribute to flooding problems on nearby property.
- 4) Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested Conditional Use is in general conformance with the Wichita-Sedgwick County Comprehensive Plan. The request does not meet the driveway and parking area paving standard of the Wichita-Sedgwick County Unified Zoning Code, and must therefore be reviewed by the governing body.
- 5) Impact of the proposed development on community facilities: The requested Conditional Use will generate increased traffic on this portion of Meridian. The proposed conditions should ensure that area storm water systems should not be affected.

JESS MCNEELY Planning staff presented staff report.

ALDRICH asked the applicant if he planned on having handicapped accessible port-a-potties on site, and if so, how many.

BRUCE BERGMANN said he planned on having one handicapped accessible port-a-pot, and added that he has been out there for twenty years and the number of handicapped people that come out is pretty minimal.

MOTION: To approve subject to staff recommendations.

MCKAY moved, **ALDRICH** seconded the motion, and it carried (12-0).

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9. **Case No.: PUD2006-03** – Webb Road, LLC, Restaurant Webb, LLC, Fountain Square, LLC c/o Christian Ablah (Owner); Poe & Associates c/o Tim Austin (Agent) Request Create PUD #23 Firepoint Planned Unit Development North of K-96 and west of Webb Road along Toben Street North on property described as;

Lots 2 through 9, Block 3 and Lots 1 and 2, Block 4, Mediterranean Plaza Addition, Wichita, Sedgwick County, Kansas

AND

Lot 18, Comotara Industrial Park 5th Addition, an Addition to Wichita, Sedgwick County, Kansas.

Generally located North of K-96 and west of Webb Road along Toben Street North.

BACKGROUND: The applicant proposes to create PUD #23 Firepoint Planned Unit Development consisting of eleven parcels, primarily for the purpose of allowing shared signage among the parcels. The property is located along the north side of K-96 and west of Webb Road and is bisected by Toben Street North (formerly named 31st Street North), which curves from Webb Road westward and will extend northward to 34th Street North.

The “PUD” Planned Unit Development special zoning district would replace the current zoning district of “LI” Limited Industrial, but the permitted uses for the PUD would remain those uses permitted by right in the LI district. Parcels range in size from one acre to seven acres, as follows (acreages are approximate): Parcel 1 – 2.9 acres, Parcel 2 – 2.6 acres, Parcel 3 – 3.3 acres, Parcel 4 – 2.9 acres, Parcel 5 – 2.8 acres, Parcel 6 – 1.1 acre, Parcel 7 – 2.3 acres, Parcel 8 – 2.3 acres, Parcel 9 – 2.7 acres, Parcel 10 – 3.6 acres and Parcel 11 – 7.9 acres. Reserve A is a

median strip shown within the existing right-of-way of Toben Street North at its terminus with Webb Road. A vacation request (VAC2006-33) has been filed to vacate the right-of-way to form the reserve.

Maximum building height for buildings is unspecified. However, since the property is near Jabara Airport, building heights will require FAA review. Proposed maximum building coverage would be 30 percent for retail, office or restaurant use and 60 percent for industrial use. The reasoning for a greater percentage building coverage for industrial use is based on the lower employee and general parking ratios necessary with industrial-type use. Number of buildings per parcel is unspecified. Building setbacks are 35 feet along Toben Street North, which is the platted setback for these lots, and 45 feet (platted) setback for Parcels 7 and 8 on Webb.

Consistency in parking lot and lighting elements are to be incorporated. Landscaping would be per the Wichita Landscape Ordinance, which would consist of a landscaped street yard along K-96 and Webb Road and the associated parking lot landscaping and screening, with the addition of landscaping along Toben Street North. Pedestrian connectivity is required between buildings in the PUD.

The main purpose of the proposed PUD is to allow parcels or lots within the development to share signage without the signage being considered offsite. Per the Wichita Sign Code, onsite signage is limited to advertising for uses located upon a zoning lot, but in a CUP or PUD, advertising for any use within the CUP or PUD is considered onsite by the Sign Code even though it is placed upon a different parcel (or zoning lot).

The PUD excludes three tracts along K-96 developed with the Candlewood Suites hotel, the Johnny Carino's restaurant and the Fritz Co Grille restaurant, all of which have benefited or been affected by administrative adjustments to the Wichita Sign Code. BZA2004-09 granted an onsite sign (35 feet allowable height) or offsite sign (25 feet allowable height) with advertising limited to uses on Lots 6 and 7, Block 3, Mediterranean Plaza Addition, but stipulated that no offsite advertising would be permitted for a use with a separate ground sign (Candlewood met this criterion with its existing pole sign). BZA2006-02 allowed offsite signage for Fritz Co Grille on the portion of Lot 5, Block 3, Mediterranean Plaza Addition that is Parcel 4 of the PUD.

BZA2004-20 allowed a taller sign (35 feet) for Ted's Montana Grill on Parcel 8 of the PUD in exchange for giving up one sign location.

In terms of sign spacing, the Sign Code requires a minimum spacing interval of 150 feet apart on a single zoning lot, including a PUD property. This spacing interval is used to calculate the number of allowable sign locations per Code. The minimum spacing can be varied from strict application by reducing it up to 1/3 (per administrative adjustment guidelines of the Sign Code) but varying the spacing is not to be used to add to the maximum number of sign locations based on the 150-foot spacing interval. The Sign Code allows a trade-off of five additional feet in height for a forfeiture of one sign location, up to a maximum height of 35 feet.

Based on these requirements of the Sign Code, Webb Road would be allowed a total of four sign locations, including the land within Reserve A. Two locations are utilized today, leaving a potential for two more signs. The number of signs requested and allowed on Webb, Toben Street North and 34th Street North are in alignment.

The frontage along K-96 from Webb Road to the western edge of Parcel 3 is sufficient for 14 sign locations. The signs for Fritz Co Grill and Johnny Carino's are located within the PUD boundaries and would be subject to the PUD sign plan requirements. Including the sign on Candlewood, which is 30-foot sign, the existing signs on K-96 are equivalent to seven sign locations. The applicant has requested to combine sign locations into two larger (450 square feet) and taller (45 feet in height) signs plus one typical sign (200 feet in size, 25 feet in height). The two larger signs are intended to serve as the center identification signs for the development.

Virtually all of the surrounding land is zoned LI. To the north, northeast and northwest, development consists of an automobile dealership, a specialty hospital and industrial parkland with manufacturing firms and office/warehouse firms. To the east is Jabara Airport. To the south is K-96 and south of K-96 is an office park with a variety of office, medical facilities and industrial manufacturing and service firms.

CASE HISTORY: The property is platted as Mediterranean Plaza Addition, recorded March 16, 1988, and Comotara Industrial Park 5th Addition, recorded December 21, 1978. DP-240 Fountain Square CUP was approved

governing the majority of the development on March 16, 1999, but never took effect due to failure to plat the property according to the approved CUP conditions. Instead, the developer proceeded to develop the property based on its underlying LI zoning.

ADJACENT ZONING AND LAND USE:

NORTH:	LI	Auto dealership, specialty hospital, manufacturing, office
EAST:	LI	Jabara Airport
SOUTH:	LI	K-96, office park
WEST:	LI	Industrial park

PUBLIC SERVICES: Webb Road is a major arterial. 2006 annual average daily traffic was 8,500 vehicles per day on Webb Road north of the interchange with K-96. Mediterranean Plaza Addition allows one point of access into Lot 9 (Parcel 8), which is the private drive to Candlewood Suites, and a street entrance onto Webb Road. All normal public services are available.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide," 2005 amendments to the *Wichita-Sedgwick County Comprehensive Plan* identify the site as "employment/industry center." LI zoning is in conformance with the *Comprehensive Plan*. The proposed uses of the PUD also would be in conformance.

RECOMMENDATION: The PUD is intended to create a superior quality development that may not conform to all the requirements of the Unified Zoning Code by:

- (1) Reducing or eliminating the inflexibility that sometimes results from strict application of zoning standards that were designed primarily for individual lots;
- (2) Allowing greater freedom in selecting the means to provide access, light, open space and design amenities;
- (3) Promoting quality urban design and environmentally sensitive development by allowing development to take advantage of special site characteristics, locations and land uses; and
- (4) Allowing deviations from certain zoning standards that would otherwise apply if not contrary to the general spirit and intent of this Code.

The proposed PUD meets these criteria primarily by allowing flexibility in developing a consistent signage plan and by incorporating provisions such as consistency in parking lot lighting elements and landscaping that enhances the quality of the development.

Based on these comments and information available prior to the public hearing, Staff recommends the application be **APPROVED** subject to the following conditions:

1. Add 35-foot building setbacks along K-96 and 34th Street North.
2. Add "leased area" abutting the west property line of Parcel 8 to the PUD for joint signage purposes.
3. Revise General 2 to clarify that site development standards, including but not limited to parking requirements and screening, shall be provided per the Unified Zoning Code as per requirements for the LI zoning district unless otherwise specified by the general provisions of the PUD.
4. Add to General Provision #11 that a landscaped street yard is required along Toben Street North and 34th Street North.
5. Provide revised sign plan, limiting the two larger signs to 450 square feet in size. Incorporate general provision that signs shall conform to the sign plan, shall not be less than 150 feet apart; sign height not to exceed 35 feet except for two signs that may be 45 feet in height, and that any modification of freestanding signage within the PUD or the excluded tracts shall be compensated for by the PUD so as not to result in an overall increase in freestanding signage from that shown on the Sign Plan herein.
6. Delete General Provision #15.

7. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
8. The transfer of title of all or any portion of the land included within the Planned Unit Development does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land and be binding upon the present owners, their successors and assigns, unless amended.
9. Prior to publishing the resolution establishing the PUD zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as PUD #23) includes special conditions for development on this property.
10. The applicant shall submit 4 revised copies of the PUD to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Virtually all of the surrounding land is zoned LI. To the north, northeast and northwest, development consists of an automobile dealership, a specialty hospital and industrial parkland with manufacturing firms and office/warehouse firms. To the east is Jabara Airport. To the south is K-96 and south of K-96 is an office park with a variety of office, medical facilities and industrial manufacturing and service firms.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed as zoned, but it would lack the flexibility in site development regulations to achieve the cohesive development pattern requested.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The net benefit of the PUD should be positive by encouraging a planned development in terms of signage and other site development elements.
4. Length of time the property has remained vacant as zoned: The majority of the site has been since the 1990s.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "2030 Wichita Functional Land Use Guide," 2005 amendments to the *Wichita-Sedgwick County Comprehensive Plan* identify the site as "employment/industry center." LI zoning is in conformance with the *Comprehensive Plan*. The proposed uses of the PUD also would be in conformance.
6. Impact of the proposed development on community facilities: The impact should not be greater than the capacity of the streets and other public facilities for this urban corridor intended for urban scale employment center.

DONNA GOLTRY Planning staff presented staff report.

MOTION: To approve subject to staff recommendations.

JOHNSON moved, **MCKAY** seconded the motion, and it carried (12-0).

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10. **Case No.: DER 2007-02** - Request The City of Valley Center seeks annexation of various tracks of land located adjacent to the City of Valley Center – Resolution No. 518-07.

Background: On February 20, 2007, the City of Valley Center passed Resolution No. 518-07 authorizing a public hearing on May 1, 2007 for the purposes of considering the unilateral annexation of 25 tracts of lands located adjacent to the City of Valley Center. All proposed annexation areas fall within the Valley Center 2030 Urban Growth Area as designated within the Wichita-Sedgwick County Comprehensive Plan *Preparing for Change*,

adopted and updated by the Metropolitan Area Planning Commission and the Board of County Commission in May 2005.

Prior to unilaterally annexing property, Kansas statutes require that a plan be prepared indicating the means by which city services will be extended to the area proposed for annexation. The City of Valley Center has not submitted to the MAPD, a copy of the service plan describing the extension of services to the annexation areas.

Analysis: Kansas statutes governing unilateral annexations provide for official notification to certain local officials, including planning commissions having jurisdiction in the area. Additionally, Kansas statutes require that the planning commission review the proposal and make a finding of compatibility or incompatibility with any adopted land use or comprehensive plans related to the area and the annexing city.

After review by staff, it has been concluded that the proposed annexation areas adjacent to the Valley Center city limits are compliant with the Wichita-Sedgwick County Comprehensive Plan.

Recommended Action: That the Metropolitan Area Planning Commission find the unilateral annexation proposed by Resolution No. 518-07 of the City of Valley Center to be consistent with the adopted Wichita-Sedgwick County Comprehensive Plan.

Attachments: Attachment No. 1 - Resolution No. 518-07 and map.
Attachment No. 2 - 2030 Urban Growth Areas Map, May 2005.

DAVE BARBER Planning staff presented staff report.

MITCHELL referenced paragraph two, which read in part “Prior to unilaterally annexing property, Kansas Statutes require that a plan be prepared indicating the means by which city services will be extended to the area proposed for annexation”. He stated that a plan has not been provided.

MCKAY asked how many annexations have they approved without a services plan?

MITCHELL responded “too many”.

DUNLAP commented that they could submit a plan that says they will not do anything, that is their plan.

MOTION: To defer the item until the City provides a service plan.

MITCHELL moved, **ALDRICH** seconded the motion, and it carried (9-3). **JOHNSON, MARNELL, MCKAY** – No.

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- 11. Case No.: DR2005-21** - McConnell Air Force Base (AFB) Joint Land Use Study – Rezoning of AFB property to the AFB, Air Force Base District and rezoning of properties within approximately one-half mile of the AFB to the AT/FP-O, Anti-Terrorism/Force Protection Overlay District. Properties are generally located in an area bounded by Pawnee on the north, Webb on the east, 60th Street on the south, and Oliver on the west.

Background: In November 2006, the Sedgwick County Commission and Wichita City Council directed staff of the Wichita-Sedgwick County Metropolitan Area Planning Department to proceed with a number of zoning code text and zoning map amendments in order to implement the recommendations of the Implementation Coordination Committee for the *McConnell Air Force Base Joint Land Use Study, May 2005* (JLUS).

In February 2007, the Sedgwick County Commission and Wichita City Council amended the Wichita-Sedgwick County Unified Zoning Code to create the AFB, Air Force Base District and the AT/FP-O, Anti-Terrorism/Force Protection Overlay District. The map on the following page shows the properties that are proposed to be rezoned to these two new districts. The following is a description of these two new districts.

AFB, Air Force Base District: This new district is proposed to be applied to all property owned by McConnell Air Force Base. This zoning district is the most intense zoning district in the zoning code hierarchy, meaning that properties in the other zoning districts do not need to provide screening or buffers from McConnell Air Force Base. Additionally, the zoning district imposes no use restrictions or development standards, which formalizes past practice.

AT/FP-O, Anti-Terrorism/Force Protection Overlay District: This new overlay district is proposed to be applied to properties within approximately one-half mile of McConnell Air Force Base. The overlay district is intended to reduce future potential threats to base personnel and property from terrorists. The overlay district limits new structures within the overlay district to a height of 25 feet. Existing structures are allowed to remain and can be reconstructed at the existing height. Also, new structures may exceed 25 feet in height if Air Force Base property would not be visible from the new structure.

Additional details regarding the JLUS, the new zoning districts, and the proposed rezoning are available online at: <http://www.wichita.gov/CityOffices/Planning/AP/Comprehensive/JLUS.htm>

A notice of the March 15, 2007, public hearing before the Wichita-Sedgwick County Metropolitan Area Planning Commission (MAPC) on the proposed zoning map amendments was published in *The Derby Reporter* and *The Wichita Eagle* on February 22, 2007. A notice of the March 15, 2007 hearing before the MAPC and the March 1, 2007, hearing before the Derby Planning Commission was mailed to the owner of each property proposed for rezoning. The recommendation of the Derby Planning Commission will be presented to the MAPC at the public hearing on March 15, 2007.

Recommended Action: Based on information available prior to the public hearing, staff recommends that the proposed zoning map amendments be **APPROVED**. This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The zoning of the neighborhood is predominately a mixture of industrial and residential classifications. However, the uses and character of the neighborhood are dominated by industrial uses, with several of the region's major employers (McConnell Air Force Base, Spirit, Boeing, Cessna) being located in the neighborhood. The AFB, Air Force Base District is an intensive industrial zoning classification that matches the uses and character of the AFB and is a more appropriate zoning classification than the existing residential classifications, which technically do not permit many existing uses. The AT/FP-O, Anti-Terrorism/Force Protection Overlay District is an overlay that places height restrictions on new structures near the AFB in order to help preserve the future viability of the AFB as a major community employer and contributor to national defense.
2. The suitability of the subject property for the uses to which it has been restricted: The AFB property is unsuitable for the predominately residential and agricultural uses to which it is restricted by its current zoning classifications. Most of the current uses of the AFB property do not conform to existing zoning regulations. The AFB, Air Force Base District is specifically tailored for AFB property and, therefore, is the most suitable zoning classification for the AFB. The importance of the AFB as a major community employer and contributor to national defense make the height restrictions of the AT/FP-O, Anti-Terrorism/Force Protection Overlay District for properties surrounding the AFB a suitable restriction of the use of those properties.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Nearby properties should not be detrimentally affected by the proposed zoning changes. The use of the AFB property will not change based on changing the property's zoning classification. Restricting the height of structures on properties surrounding the AFB as proposed by the AT/FP-O, Anti-Terrorism/Force Protection Overlay District will have no detrimental affect on the properties surrounding those to be restricted by the overlay district.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon property owners: The Department of Defense identified the threat of terrorist attack on the AFB by small arms or shoulder-mounted missile launchers from surrounding properties as significant and

recommended limiting the height of new structures on properties surrounding the base. Therefore, the proposed AT/FP-O, Anti-Terrorism/Force Protection Overlay District is a significant contribution to the public health, safety and welfare while not imposing undue restrictions on private property rights.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed zoning map amendments are consistent with the recommendations of the *McConnell Air Force Base Joint Land Use Study, May 2005* (JLUS). The JLUS recommends revising current regulatory requirements to minimize potential safety conflicts, as recommended by the Federal Land Use Compatibility Guidelines. The proposed zoning map amendments further this objective.

SCOTT KNEBEL Planning staff presented staff report.

SCOTT KNEBEL briefly reviewed the background of the item and staff memorandum dated February 22, 2007. He said the following items were not directly related to the proposal and would not be discussed at the hearing:

1. Buying anyone's property;
2. Raising anyone's taxes;
3. Changing anyone's insurance;
4. Annexation; and,
5. Changing anyone's school district.

MARK MCLAIN, MCCONNELL AIR FORCE BASE, Director of Staff, said he was present to answer any questions the MAPC might have concerning the recommendation.

DUNLAP asked if the Air Force was satisfied with the proposed changes.

MCLAIN commented that as far as their present and future missions, the recommendations of the Implementation Coordination Committee satisfy their every need.

DUNLAP asked if the plan helps with the Base Realignment and Closing (BRAC).

MCLAIN stated that accommodating the future mission capabilities of McConnell and what the base can do in the future bodes well for the future military value of the base.

JOHN SCHLEGEL, DIRECTOR OF THE METROPOLITAN AREA PLANNING DEPARTMENT, asked Dunlap to explain BRAC.

DUNLAP said Base Realignment and Closing determines if a base's mission can be divided among other Air Force bases. He said it has been determined that not all bases currently operating are needed, and added that if there is an atmosphere of "they (town/city/county/neighbors, etc.) don't want the Air Force here" then it could be decided that the base is not needed. He said he does not want that to happen because it will be a tremendous blow to Wichita's economy.

MIKE MCKAY, CIVIL ENGINEER, MCCONNELL AIR FORCE BASE, said he was present to answer any questions. He provided several handouts including a pamphlet entitled "Economic Impact Facts Flier" stating that economic impact of the base is approximately \$468,000,000 annually. He also handed out resolutions signed by the City of Wichita and Sedgwick County supporting development of the Joint Land Use Study. He also mentioned that members of the Joint Land Use Policy Committee included local governments, the Wichita Area Builders Association, the Wichita Area Association of Realtors, and the Greater Wichita Economic Development Center.

DUNLAP asked what other communities were doing to protect Air Force bases located in their communities.

MCKAY responded that many communities are not doing anything and that thirty-three other bases have been selected for closure. He said Wichita was the first community that he knew of that is doing the anti-terrorist overlay.

TOM WAKEFIELD, CESSNA AIRCRAFT VICE PRESIDENT and GENERAL COUNSEL said he was present to talk about Cessna's Pawnee property. He stated that they have been in the community making airplanes and creating jobs for Wichitans before McConnell Air Force Base existed. He said Cessna has been a good citizen of Wichita, that they have worked with the City donating land for Cessna Park and providing free parking for air shows and open houses. He stated that the 25-foot height restriction will create a hardship on Cessna because of the size of their hangers and other manufacturing facilities. He said Cessna creates jobs for Wichitans, they provide their own security protection, and identity badges restrict access into Cessna buildings. He said because of this they do not feel the height restriction is necessary. He stated that the height restriction will make it almost impossible to work on airplanes. He said this plan amounts to taking Cessna's property without compensation and without regard to the expansion and growth of Cessna. He said Cessna has purchased additional land for growth. He said 25 feet might not sound like much, but that they needed that height to build airplanes. He concluded by stating that Cessna did not feel it was fair to take that away from them.

NICK NICHOLS, 4800 S. OLIVER (47th STREET SOUTH and OLIVER) said he has some of the same concerns. He said you buy commercial property with the idea that you will build and expand, create value and pay taxes. He said this proposal will limit his ability to accomplish his goals.

RICHARD PRESTON, 424 S. KOKOMO, DERBY, presented a PowerPoint presentation. He said this proposal was supposed to make the base and surrounding area safer; however, he said it does not make any sense and added that the protective overlay doesn't protect anything. He said the key to this proposal was the regulations, which imposed a 25-foot height limitation on new buildings. He said this height restriction will not mitigate any risk since there are already over 100 buildings in the area in excess of that height restriction. He said there are already plenty of places that terrorists can use. He mentioned probability factors and statistical analysis of this proposal, which he said will cause a lot of people heartache, pain, and money. He said a cost versus benefit analysis could never be used based on this standard. He also mentioned that he had checked the Internet and that no one is doing a 25-foot height restriction. He said you cannot even see the base from his housing development and that every house in the development has been built for at least 15 years. He mentioned several apartment complexes that were in closer proximity to the base and how they were a bigger risk. He concluded by reiterating that this plan would not mitigate any risk and that a lot of people would be adversely affected by this proposal.

Responding to a question from **DUNLAP** concerning where his property was located, **PRESTON** said he felt the district was unnecessary and added that people trying to sell their property may be affected by the "anti-terrorism" zone designation. He asked why live in the zone if you don't have to?

HOA NGUYEN, 3740 RUSSHWOOD COURT, said he agreed with Cessna representative that an industrial zone with a 25-foot height limit was not feasible. He said it appeared that the overlay was approximately one-half mile around the Air Force base except to the west, which was less and asked why the west was different.

KARL HODGES, 7217 S. HILLSIDE, said he has an 80-acre farm where he plans to retire at 5476 S. Woodlawn, a portion of which barely catches the ½ mile outline of the proposed overlay district. He asked the commission to think about what has been said at today's meeting; that this is the first area that is establishing an anti-terrorism zone and that they are the guinea pigs. He said when the Derby City Council voted to approve the Air Force Base district zoning. He supported what the base wanted to do with its own property. Having said that, he said he should have the right to do what he wants to do with his 80 acres. He said it was also mentioned at the Derby meeting that an industrial designation would increase property values, which will increase taxes. He said that a nearby area has been zoned industrial for 25 years and that no one is interested in buying it. He said he does not believe this is a good deal for property owners. He said property owners will probably have to purchase anti-terrorism insurance because they are in this area. He said an area of his property is zoned Limited Commercial, and that a Walgreen's could not be located there because it is 30 foot

tall. He concluded by saying that he has put all of his all time, money and effort into this piece of property for his retirement and now it is being swept away. He asked that his property be left out.

ALDRICH asked if the overlay encompasses all of his property or just a portion of it. **HODGES** said all of it.

KNEBEL explained that they did not want to split parcels. Generally if a portion of a property fell within a half-mile of the base, then the entire property was included.

TRENA HODGES, 7217 S. HILLSIDE mentioned everything they have put into their 80 acres so their grandchildren will have a place to come and play. She said they want to build a barn that is higher than 25 feet. She said after the Derby meeting, it was recommended that they visit with Planning Staff. She said there will never be any buildings constructed by McConnell within their property. She said she does not want industrial zoning of their entire farm for the sake of a few feet and requested that their farm be excluded from this proposed zoning. She said their property has nothing to do with future development of McConnell Air Force Base. She said she is not against anti-terrorism, but added that this plan is putting an unfair burden on people who reside or plan to reside in this area. She mentioned that Tinker Air Force Base bought an entire residential area in close proximity to the base.

BOB KAPLAN, 430 S. MARKET, said he wanted to be the voice of moderation. He said he was representing the property owner at the corner of Pawnee and Oliver, which was currently an auto dealership. He said there have been some preliminary discussions concerning the possibility of constructing a multi-story (three-story) office building at the location. He mentioned issues of merit and consideration of private property rights. He said this overlay would not allow a three-story building and added that they would like to see the building height restriction increased to 36 feet.

KNEBEL clarified that they were not changing the conditions of a “protective overlay”. He said this proposal was for an “overlay district”, which is different from a “protective overlay district”. He said this overlay district itself is a segment of the Unified Zoning Code (UZC) that the Commission previously adopted. He said the proposal is that it be applied to certain properties. He said in order to change the wording of the overlay an additional advertised public hearing on the code amendment would be required.

KALOR HEBRON, 4601 E. 57th ST., SOUTH made several comments relative to local, state and federal leaders losing the “big picture” of what this country was and started out as. He mentioned plundering of personal and property rights and money. He said the biggest threat to freedom is a government who regulates it and turns it into a license. The biggest threat to independence is a government who creates socialized and subsidized programs at the forced expense of others. The biggest threat to peace is a government who has no respect for the individual or world sovereignty. He said men don’t learn from history, they only repeat it. He said the government is \$8.8 trillion in debt and is broke. He said jobs are leaving the country while manufactured goods are flooding in. He said the free market system no longer exists because of corporate America and big government protecting special interest groups. He said our security is not threatened from outside our boundaries, but only from within as our personal and property rights and finances are plundered

Tape 2, Side 1

from within by those in power, who are paid to protect us from ourselves and the world. He said McConnell is a big pork barrel spending program at the forced expense of others nationwide and only benefits a few and is a threat to the masses. He concluded by suggesting that the base be shut down and that citizens be allowed to arm themselves with weapons of their own choice. He said the terrorists have the weapons of their choice.

DAN STEVENS, 9117 E. CREED, said he bought his house a year ago. He said he was concerned because the information provided on the proposal was pretty ambiguous. He mentioned property values and possible expansion of this overlay in the future. He asked what guarantees does he have that this won’t force him from his property? He also asked what hope did he have of selling his property in an anti-terrorism zone?

DAVID ANDERSON, 7400 SEDONA, said his main concerns were property values and taxes. He asked if property owners were going to receive some kind of compensation? He said his neighbor, who lives ½ mile away can build whatever he wants. He said selling or building on his property is restricted. He said he was also concerned about insurance premiums increasing. He said he is maxed out on what he can afford right now, he can't afford any other expenses.

ROBERT AUSTIN, 2559 S. DALTON, said he is retired Air Force and civil service from McConnell and that he "bleeds blue". He said he is also a concerned homeowner in this area. He said he didn't think that anyone knew what the insurance was going to do. He said this proposal was a way to try to avoid certain disasters that could come up. He said he thought it was up to the Commission to make some of those decisions for citizens because they have no idea and can't appreciate some of the decisions that have to be made. He said some people might actually buy homes in the anti-terrorism zone because they feel more secure. He said this is what we have to do now and people have to evaluate that.

FAYON WEEKS, 2555 DALTON said she has lived in the area 25 years. She said she is concerned if the value of her property will not appreciate or will even depreciate. She said she does not want McConnell to purchase her property. She said they have looked at other areas where they might move and said maybe they will be taking a loss on their property and added that a lot of ex-military like to live close to McConnell. She said people need some answers before re-zoning of this area is actually approved. She mentioned issues like decreases in property values, increased insurance premiums, and whether they will be able to find anyone to buy their property if they are in this proposed zone.

Responding to a question from **HENTZEN, WEEKS** commented that she could not recall getting a new appraisal for her house in March.

JARROD BARTLETT, BOEING said they are also located inside the overlay boundary. He requested that this topic be tabled so they can work with their customers and neighbors to come up with a solution that will help them if they need to build a new hanger. He said the hangers that they currently have on site are more than 100 feet tall, and any new hangers would be of similar size. He said Boeing does not have an opposition or stance on the overlay district, but would like to find a better solution for their future needs.

KARL HODGES said his 80 acres "de-valued" on his last tax evaluation for the first time and that he expected that it had something to do with this proposal.

GISICK asked if McConnell was asking for this overlay district or was it the City or County, and was it fair to ask McConnell for a rebuttal since they were not an applicant.

ALDRICH asked if the Air Force would have any objections to an evaluation of the boundaries along the south and southeast.

MARK MCLAIN said the most compelling argument for tabling the issue would probably be from those individuals or entities that already have security issues addressed, i.e., Boeing and Cessna who have security in place on their properties.

BISHOP clarified that the Joint Land Use Study (JLUS) developed the overlay boundaries.

KNEBEL said the Anti-Terrorism /Force Protection Overlay District was a recommendation of the JLUS. He said the boundary itself was based on a follow-up study that the Air Force Base had done that indicated that the buffer area be approximately ½ mile surrounding the base.

BISHOP asked if it was based on just distance or did the line of sight issue enter into the decision?

KNEBEL said the line of sight issue is addressed in the overlay code itself, which indicates that there can be an exception granted to the 25-foot height limitation if line of sight at the height requested is not there. He gave an example that if there was a permit to build to 40-foot structure and there were intervening structures or topography and vegetation that prevented that line of sight, then a permit could be issued. He further clarified that the ½ mile line is based on the distance at which the most likely weaponry would be effective.

MARNELL clarified that this proposal was for force and asset protection. He said the facilities are fairly tightly configured at McConnell and that the overlay is far wider than the distance from the facilities and personnel. He said it seems like the proposed district is overly wide. He mentioned “glide scope” for building structures meaning the further away you are from the airport the higher you can build.

KNEBEL said the overlay boundary was based on protecting the entire Air Force Base as opposed to portions that are more densely populated.

MARNELL asked if that couldn’t be accomplished with something less intrusive than this?

MCKAY commented that the overlay was out of balance. He said Boeing is on both sides of Oliver and Oliver seems to be breaking point to the west. He said to the east it is over two miles to actual facilities. He said there are inequities in the boundary design.

KNEBEL said the original proposal was for boundaries at K-15 and I-35. He said the committee realized that the western boundary of the base was bordered by 100-foot hangars and questioned whether it made sense to restrict this area when there was no line of sight there for the majority of the properties.

VAN FLEET asked about similar proceedings going on all over the United States with respect to important military installations.

KNEBEL said he couldn’t find anything for this type of overlay district.

VAN FLEET asked about the staff report relative to the statement “All new structures may exceed 25 feet in height if Air Force Base property would not be visible from the new structure.” He asked if that was any piece of dirt or structure on the base?

KNEBEL said any base property.

MOTION: To defer action on the proposed Anti-Terrorism/Force Protection Overlay District and direct staff to work with affected property owners to refine the boundary for the overlay district.

HILLMAN moved, **BISHOP** seconded the motion, and it carried (12-0).

HILLMAN commented that he thought it was important that the Air Force and businesses and homeowners in the area have a chance to discuss and further refine the boundaries.

ALDRICH said he thought it was extremely important to protect McConnell and its economic impact in the area. He added that he thought it was equally important to take care of citizen property rights and explore the possibility of shrinking the proposed boundary.

Responding to a question from **DUNLAP** concerning who would lead the proposed discussion, **KNEBEL** said he would ensure that the discussions take place and report the results/recommendations back to the Commission.

MOTION: To approve the proposed Air Force Base District subject to staff recommendations.

HENTZEN moved, **HILLMAN** seconded the motion, and it carried (12-0).

The Metropolitan Area Planning Department informally adjourned at 4:10 p.m.

State of Kansas)
Sedgwick County) ss

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2007.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)